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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,017	04/07/2004	Todd C Werner	1130.33	3016

21901 7590 05/22/2006

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EXAMINER
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JOERGER, KAITLIN S

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/709,017		WERNER, TODD C	
	<b>Examiner</b>		<b>Art Unit</b>	
	Kaitlin S. Joerger		3653	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/8/04</u>  | 6) <input type="checkbox"/> Other: ____                                     |

**DETAILED ACTION*****Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the jostling member in the form of a wheel must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because there is a question mark ("?") on figure 1 near reference number 25 and the reference numbers are unclear and difficult to read. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to

Art Unit: 3653

avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 11 claims that the jostling member is in the form of a wheel, this feature was only cursorily mentioned in the specification

Art Unit: 3653

and the description does not meet the enablement requirement. The examiner is unclear as to how a wheel would function as a jostling member.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Werner (US Patent 6,601,841).

Regarding independent claim 1, the '841 patent teaches an apparatus for breaking frictional bonds between items in a stack in a hopper that is emptied from the bottom, comprising:

- a floor plate, 50, for supporting said items in the hopper, the floor plate disposed in a horizontal plane and having a leading and trailing edge;
- a base plate, 46, that overlies the floor plate and that is secured to the floor plate for conjoint movement, the base plate having a leading and trailing edge;
- jostling member, 47 and 49, secured to the base plate and having a part adapted to tap against the trailing edge of items so that the tapping prevents items from becoming stuck in the hopper;
- oscillating means secured to the floor plate to cause the floor plate, base plate, and jostling members to oscillate in the horizontal plane (see column 6, lines 18+);

Art Unit: 3653

Regarding claim 2, the '641 patent further teaches:

- a first conveyor means, 12, that delivers the items to the hopper;
- a second conveyor means, 30 and 32, that carries items from the hopper along a second path disposed substantially ninety degrees to the first path;
- the leading and trailing edge of the floor plate are substantially parallel to the first path and transverse to the second path;
- the oscillation of the floor plates occurs transverse to the first path and parallel to the second path (see figure 2);

Regarding claims 3 and 4, the '641 patent further teaches:

- an adjustably mounted barrier means that extends into the hopper in a direction transverse to the first pathm the barrier means comprising:
  - an elongate rod, 28, disposed in substantially parallel relation to the first path;
  - a mounting block and locking means for locking the mounting block at any pre-selected position along the rod, 44;
- a rigid arm barrier, 42, mounted to the mounting block and extending in a parallel relation to the second path;
- the rigid barrier is moved in a pre-selected distance toward the first conveyor to accommodate shorter items and moved away from the first path to accommodate longer items (see column 5, lines 30+).

Regarding claim 5, the '641 patent further teaches:

- with adjusting means so that the hopper can accommodate items of differing widths entering the hopper (see column 5, lines 31+, lines 49+ and column 7, lines 55+).

Art Unit: 3653

Regarding claim 7, the oscillating means of patent '641 further comprises:

- a biasing means secured to the floor plate;
- a cam follower secured to the floor plate;
- the biasing means disposed in abutting relation to the cam follower;
- a drive shaft;
- a cam mounted to the drive shaft;
- the biasing means urging the cam follower into abutting relation with the cam;
- whereby rotation of the cam effects oscillation of the cam follower and hence the floor plate, base plate, an jostling member (see column 6, lines 18+).

Regarding claims 8 and 9, the '641 patent further teaches:

- the jostling member being provided in the form of an angle member;
- the angle member having a horizontal part secured to the base plate; and
- the angled member projects upwardly from the leading end of the horizontal part and an acute angle.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Werner (US Patent 6,601,841).



Art Unit: 3653

The '641 patent discloses the claimed invention except for a predetermined angle of the angle member of the jostling member being a right angle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the angle of the angled jostling member, 47 and 49, taught by the '641 patent to be equal to ninety degrees, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### *Allowable Subject Matter*

Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 6 claims a specific width adjusting means structure that includes:

- an elongate slot formed in the floor plate
- the jostling member mountable in the slot
- whereby the jostling member is moved to a pre-selected distance toward the second conveyor and away from the second conveyor to accommodate different widths of items.

This adjust means is not taught in the '641 patent, nor would it have been obvious to one of ordinary skill in the art to combine such an adjusting means with the '641 patent. Therefore, claim 6 was found to contain allowable subject matter.



Art Unit: 3653

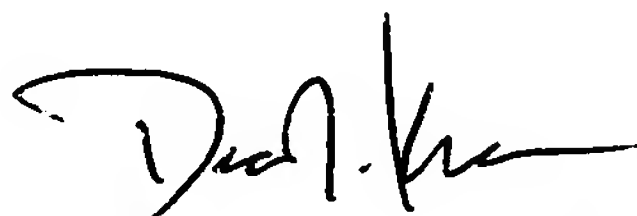
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaitlin S. Joerger whose telephone number is 571-272-6938. The examiner can normally be reached on Monday - Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ksj

  
11 May 2006

 5/15/06  
**DEAN J. KRAMER**  
**PRIMARY EXAMINER**